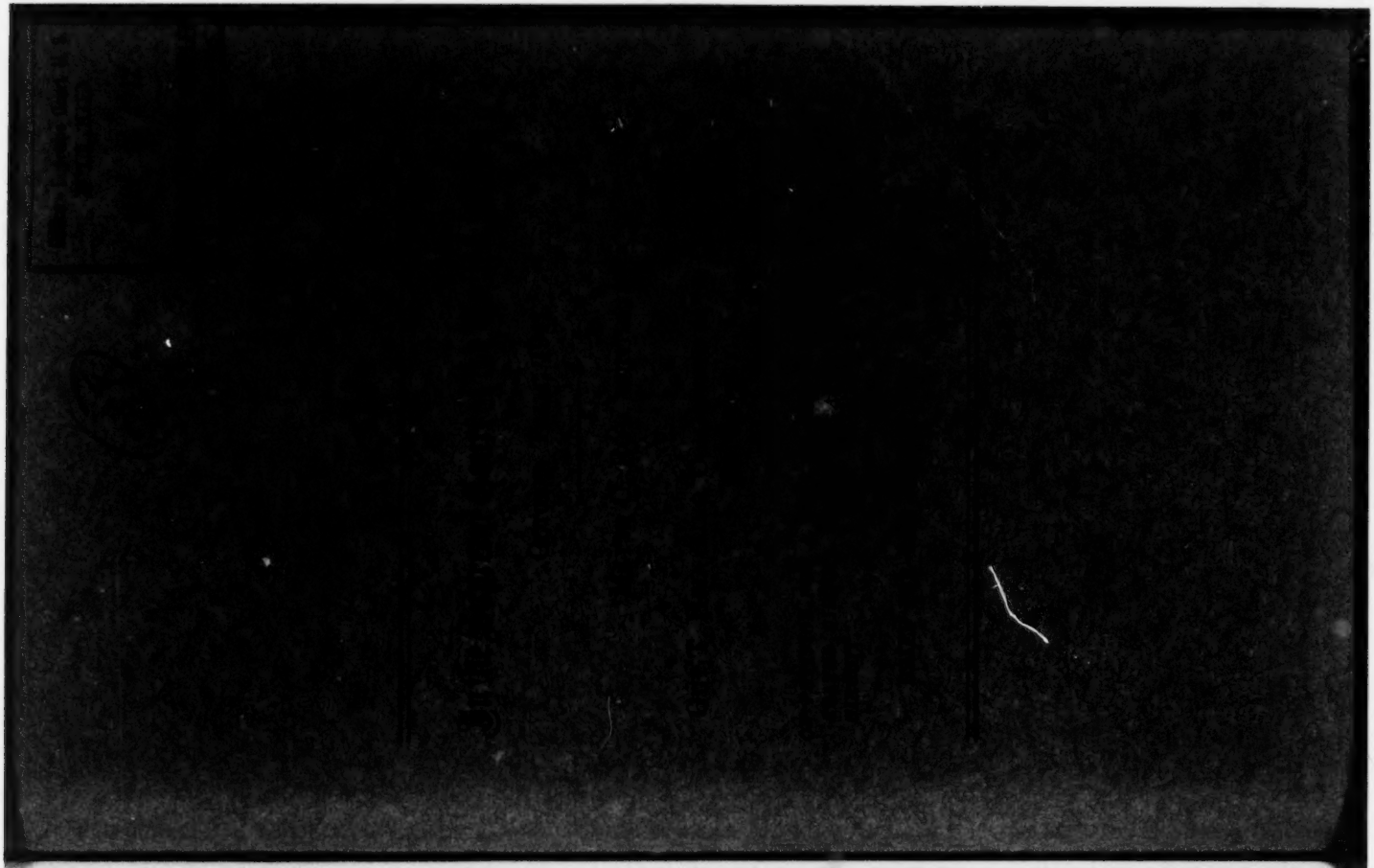

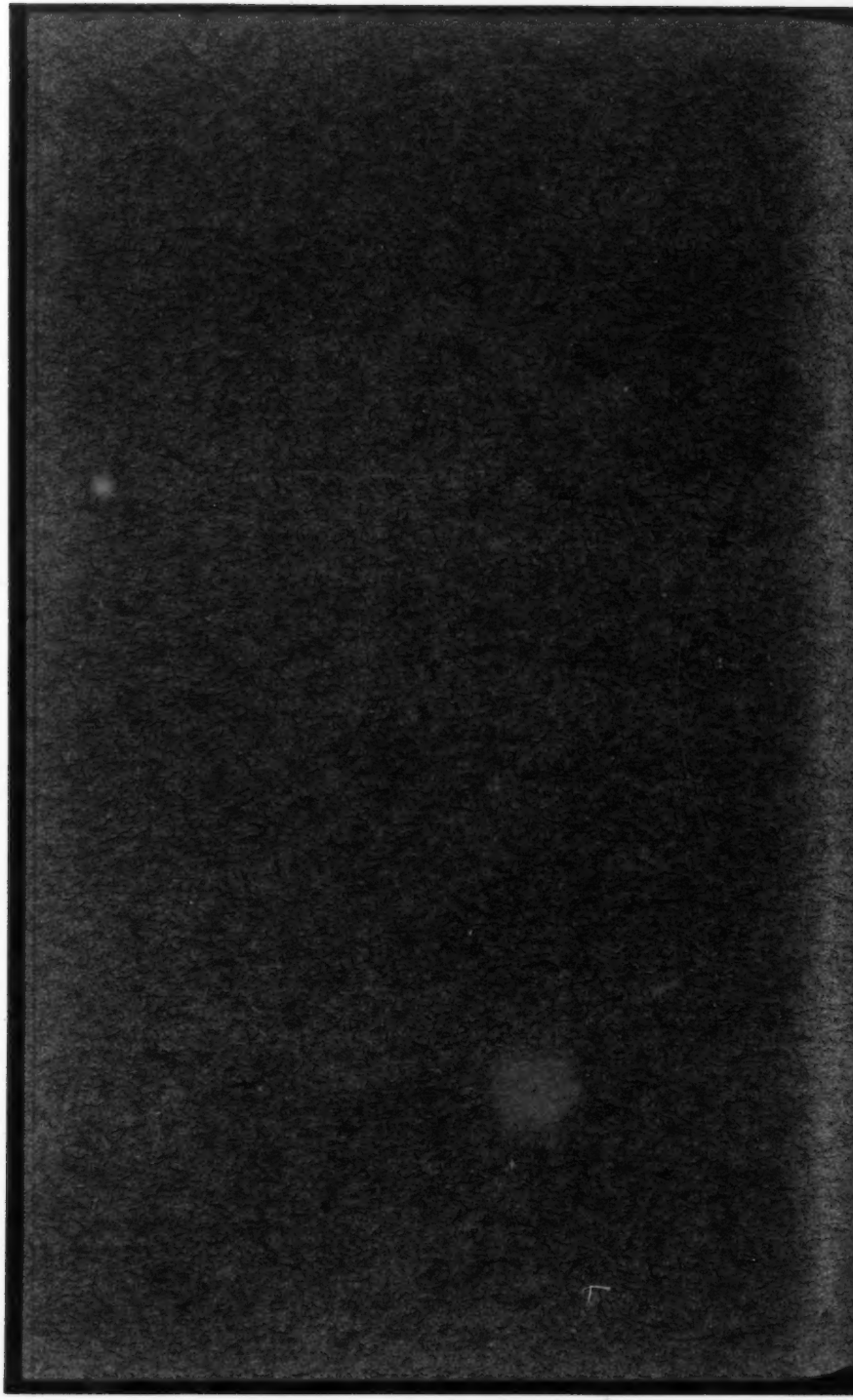

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478071—42

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1156

MAYTE C. ROSS, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Board of Tax Appeals (R. 1–5) is unreported. The opinion of the Circuit Court of Appeals (R. 27–29) is reported in 125 F. (2d) 767.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 23, 1942 (R. 30). The petition for a writ of certiorari was filed on April 17, 1942. The jurisdiction of this Court is in-

Products Company and one of the trustees of the $3,000,000 trust created by the taxpayer's first husband (R. 2, 3, 18–20). He also helped to dispose of her summer home in New Hampshire. This home was not acquired as business property nor had it been converted into such. It was used as a place of residence by the taxpayer during certain periods of the taxable years. Ross employed and conferred with various lawyers, real estate experts, accountants, and other persons (R. 4).

The taxpayer deducted in her returns for each of the years 1935, 1936, and 1937, the sum of $25,000 paid to her husband, and other sums, as business expenses incurred during those years. The Commissioner disallowed the claimed deductions on the ground that the taxpayer was not engaged in any trade or business during the taxable years and computed deficiencies accordingly (R. 1, 4). The Board found as facts that the taxpayer was not engaged in any trade or business during the taxable years; that the expenses claimed were all personal expenses, unallowable as deductions, and sustained the Commissioner's determination (R. 4–5). The Circuit Court of Appeals affirmed the decision of the Board (R. 30).

ARGUMENT

Petitioner contends that her activities constitute the management of real estate, and are, therefore, the carrying on of a trade or business within

the meaning of Section 23 (a). We think it clear, on the contrary, that petitioner's activities consisted solely of the management of personal investments, and that the case is governed by *Higgins* v. *Commissioner*, 312 U. S. 212, *City Bank Co.* v. *Helvering*, 313 U. S. 121, and *United States* v. *Pyne*, 313 U. S. 127.

Petitioner's activities, as conducted by her husband, consisted in the main of ousting the president of a business corporation in which she was financially interested (R. 18–20), in converting mortgage certificates which were regarded as bad investments into ordinary mortgages (R. 12–17), and in the purchasing of securities and other mortgages for investment (R. 17–18). Such activities are plainly the managing of investments, and not the carrying on of a real estate business.

Petitioner urges that her purchases and sales of property and mortgages show that she was engaged in business. But although such activities may be commercial, they may also be, as they were here, the mere conversion of personal investments from one type of property or security to another. *Higgins* v. *Commissioner, supra,* is directly in point, since the taxpayer's securities there too were also bought and sold.[1] In any event, the record does not show that petitioner purchased any real

[1] The *Higgins* case and *United States* v. *Pyne*, 313 U. S. 127, also show that the fact that petitioner may have maintained an office for the carrying on of her activities is immaterial.

Products Company and one of the trustees of the $3,000,000 trust created by the taxpayer's first husband (R. 2, 3, 18–20). He also helped to dispose of her summer home in New Hampshire. This home was not acquired as business property nor had it been converted into such. It was used as a place of residence by the taxpayer during certain periods of the taxable years. Ross employed and conferred with various lawyers, real estate experts, accountants, and other persons (R. 4).

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estate, and the only sales were of a residence and in the disposal of property secured by mortgage certificates.

The management of real estate, as appears from the *Higgins* case [2] and other cases cited by petitioner, consists of renting property and caring for it as a landlord, not merely the holding of mortgages as a personal investment. The record in this case plainly discloses that petitioner, through her husband, was engaged solely in the management of her investments.[3]

As petitioner herself testified (R. 8):

> During the years Mr. Ross has served me he has made all the investments. * * * So he became the investor, getting my money invested in mortgages and real estate and Mr. Ross attended to all the details, looking at every deed for me personally and investigating everything in which I invested and he bought some stocks. * * *

Mr. Ross, her husband, stated (R. 11, 23):

> * * * My occupation is portrait painter and since 1932 I have been an investor. I have no further occupations. * * *
>
> * * * * *

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[2] In the *Higgins* case it was conceded "that the real estate activities of the petitioner in *renting buildings* constituted a business." 312 U. S. 214. [Italics supplied.]

[3] The only property rented apparently was a personal residence in Florida in 1934, not one of the tax years involved in the present case (R. 9).

> I should say that in 1935, 1936 and 1937 Mrs. Ross was in the business of an investor—investments.

These accurate characterizations of petitioner's activities amply support the conclusion reached by the Board and the court below that petitioner's activities were governed by the cases holding that the managing of personal investments does not constitute the doing of business. Since petitioner is not engaged in the managing of real estate, there is no conflict with *Pinchot* v. *Commissioner,* 113 F. (2d) 718 (C. C. A. 2) or *Helvering* v. *Highland,* 124 F. (2d) 556 (C. C. A. 4). In the *Pinchot* case, for example, the taxpayer's activities consisted of the leasing and renting of property. The opinion states (p. 719):

> * * * What was done was more than the investment and re-investment of funds in real estate. It was the management of the real estate itself for profit. * * *

Petitioner has filed a motion praying for the deferment of action upon the petition for certiorari pending congressional action upon certain proposed legislation. At the present time it is entirely conjectural as to whether or in what form Congress will enact any such legislation, and whether it would in any event be applicable to the peculiar facts of this case.

CONCLUSION

This case presents no question calling for further review.

Respectfully submitted.

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MAY 1942.

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